

ROYAL COMMISSION

ON

PENSIONS AND RE-ESTABLISHMENT

**FIRST INTERIM REPORT ON SECOND
PART OF INVESTIGATION**

April, 1923

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TO HIS EXCELLENCY THE GOVERNOR GENERAL IN COUNCIL

MAY IT PLEASE YOUR EXCELLENCY:

We, the Commissioners, appointed by Royal Commission dated July 22, 1922, issued pursuant to Order in Council P.C. 1525 of the same date, to investigate, inquire into, and report upon:—

Firstly, the matters referred to in complaints made by certain officials of the Great War Veterans Association as contained in a certain telegram; and

Secondly certain questions relating to pensions, medical treatment and re-establishment needs of Canadian ex-service men and their dependents;

have the honour to present to Your Excellency in Council our First Interim Report in respect of the Second Part of such Investigation, being Report No. 2 of the Commission.

The subject matter of the reference concerning the Second Part of such Investigation is as follows:—

“1. To consider and make suggestions in respect of the procedure by which disabled ex-members of the Canadian Expeditionary Force are enabled to make application for pensions and medical treatment, or submit an appeal in respect of decisions thereon.

2. To recommend means for ensuring that suitable provision is made for those ex-members of the forces and dependents who are under serious handicaps by reason of war services, in conformity with the recommendations now made, and for whom definite legislative provision has not yet been made.

For the above purposes the Commission shall:—

1. Survey existing re-establishment needs among Canadian ex-service men and dependents.

2. Investigate available data in respect of phases of the Parliamentary inquiry as yet incomplete.

3. Obtain information as regards suitable provision for those classes of ex-service men described in Section 7, Chapter 2, of the Committee's report.

4. Investigate the question of canteen funds.

In view of the mass of evidence submitted, and the importance and multiplicity of the subjects dealt with, it is considered that probably the best method of disposing of the matters involved is not to delay until a complete and final report can be presented, but to prepare and forward, from time to time, interim reports treating the various subjects in groups, in the order of what is considered to be their urgency. On some subjects further investigation has yet to be made and additional information obtained.

For convenience, this First Interim Report is divided into five parts, as follows:—

Part One.—Introduction.

Part Two.—Procedure as to application for Pension and Treatment.

Part Three.—Appeals from decisions as to pension or medical treatment.

Part Four.—Returned Soldiers' Insurance Act.

Part Five.—Employment of handicapped men.

ROYAL COMMISSION
ON
PENSIONS AND RE-ESTABLISHMENT
—
REPORT
ON
SECOND PART OF INVESTIGATION
—
PART ONE
INTRODUCTION

In November, 1922 (immediately after completion of the hearing on the First Part of the Investigation, viz, the complaints contained in a Great War Veterans' Association telegram), the Commission prepared and issued a memorandum indicating the general scope of the investigation and the procedure to be followed thereon. Full and ample advance notice of the Commission's sittings in the various parts of Canada was given by advertisements in the daily newspapers and by circularizing Ex-service men's organization.

At the request of the Dominion Veterans' Alliance, the Commission appointed Mr. C. Grant McNeil to precede the Commission in each province and confer with ex-service men in the various centres, in order that they might be advised as to the scope and procedure of the Commission's enquiry and assisted in preparation for the public hearings. Mr. McNeil travelled from coast to coast in connection with this advance work, in November and December, 1922, and January, 1923.

The public sittings of the Commission opened in Halifax on January 24, 1923, continuing up to the present time at St. John, Montreal, Vancouver, Calgary, Regina, Winnipeg, Toronto and Ottawa, in the order named. Further sittings have yet to be held in Ottawa.

At the various sittings, ex-service men have been represented by the nominee of a Central Committee formed for the purpose of preparing and presenting evidence and suggestions on behalf of ex-service men, by selected representative witnesses presenting evidence and suggestions in respect of the various phases of the Commission's enquiry, by prominent officials of ex-service men's organizations, and (excepting at St. John, N.B.) by Mr. C. G. McNeil, the official representative of the Dominion Veterans' Alliance. There have also been present Mr. E. H. Scammell, Assistant Deputy Minister of the Department of Soldiers' Civil Re-establishment (hereinafter called D.S.C.R.), representing that department, and (excepting at Regina) Mr. J. Paton, Secretary of the Board of Pensions' Commissioners (hereinafter called Pensions Board), representing that Board. The sittings have all been open to and attended by the public and the press.

The procedure at the sittings has taken largely the form of a conference, presided over by the Commission, at which the greatest latitude has been allowed in the obtaining and the presenting of information and suggestions, including access to and use of files, documents and records of the D.S.C.R. and the Pensions Board, and in procuring information by interrogation, by the Commission and by ex-service men's representatives, of the representative of the D.S.C.R. and the Pensions Board.

Fuller and more complete details of the methods adopted in ensuring the full presentation of evidence and suggestions on behalf of ex-service men, and the publicity given to the sittings of the Commission, will be contained in a further report.

PART TWO

SUGGESTIONS RE PROCEDURE AS TO APPLICATIONS FOR PENSION AND TREATMENT

Much evidence and many suggestions have been received under this head, most of which will be considered in a later report. The Commission is of opinion, however, that the three following suggestions should be dealt with at once. They are self-explanatory. The evidence clearly shows their advisability, and as, moreover, they involve no new machinery, the Commission recommends for immediate adoption that the necessary legislation and regulations be put into operation to ensure:—

- (a) That, as a basis for any recommendation for Treatment or Pension, applicants be heard and medically examined at the local unit by a board of three medical men, one of whom shall be a Pension Medical Examiner.

In some of the units this is done, but there is no uniformity and in many instances this basic investigation and examination is conducted by one man.

- (b) That as soon as an applicant is accepted for treatment, the question of his pensionability should at once be dealt with without awaiting discharge from treatment.

The object is to obviate the delays at present involved where pension matters are not considered until the applicant is discharged from hospital. If he is found to be entitled, the assessment of Pension will be adjusted upon discharge from Treatment.

- (c) That a handbook be prepared for general circulation, setting out succinctly, and in non-technical language, information:—

- (1) as to the rights of ex-service men and their dependents respecting pension and treatment, and outlining the procedure to be followed;
- (2) as to the various other activities of the D.S.C.R. and the rights and privileges of ex-service men and their dependent in respect thereto, and the method whereby these rights and privileges may be exercised.

This matter was the subject of a recommendation by the 1922 Parliamentary Committee, but no action has been taken thereon, the reason given being that it was thought advisable to postpone the same pending any changes following the work of this Commission. The breadth of scope of the Commission's enquiry should indicate that the practical and immediate benefit contemplated by the Parliamentary Committee recommendation could not be derived from thus indefinitely putting off the issue of this information. There will always be changes, and these can be indicated, as is usually done, by supplementary notes.

The immediate need of such a publication has been demonstrated on the hearings of the Commission. A great body of regulations, rulings and practice has inevitably been developed within the administration of the Pensions Board and the D.S.C.R. There is every reason to believe that a better and more general understanding of these and of the various provisions made for ex-service men and their dependents would be for the benefit not only of the ex-soldier himself, but of those who are trying to assist him, and of the State as well.

Many complaints could thus be obviated and dissatisfaction avoided.

PART THREE

SUGGESTIONS AS TO APPEALS AND PROCEDURE FOR APPEALS FROM DECISIONS AS TO PENSION AND TREATMENT

NECESSITY FOR FURTHER PROVISIONS

As will be seen from the form of the reference above quoted, the Commission was given no authority to reverse, alter or vary decisions made by the D.S.C.R. or the Pensions Board as to treatment or pension. The scope of the Commission was to make suggestions on matters of policy. It was, therefore, futile for the Commission to investigate individual cases except where they illustrated defects in either law, regulations or administration so far as these came within the scope of the Reference.

Not unnaturally, hundreds of cases were presented to the various central committees of ex-service men by applicants who complained of adverse decisions, and who mistakenly supposed that the Commission was something in the nature of an itinerant Appeal Board with plenary powers to similarly adjust long standing grievances and make final decisions overruling the D.S.C.R. and the Pensions Board. The various Central Committees of ex-service men, however, fully grasped the real scope of the Commission's function. They have, in a spirit of intelligent co-operation and in the face of obvious difficulties, with what must have been great patience and tact, assisted in explaining the situation to applicants, and have selected, from the many cases presented to them, those which they regarded as type cases for presentation to the Commission.

The Commission is convinced, as the result of the examination of individual type cases presented both during the First Part of the Investigation as well as during the Second Part, that there is necessity for the constitution of an effective tribunal or tribunals outside the D.S.C.R. or the Pensions Board, by which individual cases can be reconsidered. In fact, recognition of the necessity for some review has already been shown by Parliament in the granting of power to the Minister of the D.S.C.R., in 1922, under which a Medical Appeal Board was established, the work and power of which will be considered later. Further reasons for the necessity of more effective review tribunals will appear in the discussion as to the present procedure. The Commission is convinced that there is considerable dissatisfaction and unsettlement throughout the country, to remedy which there should be set up at as early a date as possible a medium independent of existing tribunals, through which grievances, whether well founded or not, can be voiced and finally settled in a public yet orderly manner.

EXISTING TRIBUNALS AND PROCEDURE

(a) INTERDEPENDENCE OF TREATMENT AND PENSION

The D.S.C.R. Unit in each district has some doctors on its staff who deal particularly with pension applicants, and others who deal with applications for treatment. They are referred to generally, hereafter, as the Pension Branch doctors (called in the previous report the local Pension Medical Examiners), and the Treatment Branch doctors. These groups make recommendations on Pension and Treatment respectively, but the situation peculiar to Canada is

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that the ultimate right to treatment and to pension respectively is decided by two entirely different bodies: treatment by the D.S.C.R., and pension by the Pensions Board. The regulations under which these respective rights are created are identical but notwithstanding this, a man's disability may be considered by the D.S.C.R. to be connected with service so that he is entitled to treatment, but the same disability in the same man may be considered by the Pensions Board not to be connected with service, and pension refused, or vice versa.

The system is different in Great Britain and the United States, where there is only one decision, and that is as to pension; this automatically determines the right to treatment. An applicant who reports with a disability has his claim for pension immediately considered by the pension authorities. If it is found that his disability is connected with service, but that the disability may be reduced or removed by treatment, then the pension authorities direct that he shall receive treatment. His pension begins forthwith at one hundred per cent, since he is, of course, during treatment, one hundred per cent disabled. If the time arrives that treatment cannot further improve his condition, he is discharged from hospital and his pension is assessed at the percentage of disability which still remains, the service connection of his disability having already been decided when he was taken on for treatment.

In Canada, an applicant who has a disability and needs treatment is examined by the doctors of the Treatment Branch of the D.S.C.R. Unit, and their recommendation is forwarded to the Director of Medical Services, who decides whether the disability is connected with service, and if so, orders the man taken on for treatment. It is only after he is discharged from hospital, the time having arrived when further treatment would be ineffectual, that his application for pension is considered. Then, the connection of his disability with service has once more to be determined, but this time by the doctors of the Pensions Branch of the local D.S.C.R. unit, who consider his case and make their recommendation. His application for pension is forwarded to the Pensions Board, which is not bound in any way by the previous decision of the D.S.C.R. as to treatment. The result may be, and often is, that a man may have been considered by the D.S.C.R. as eligible for treatment (which is, after all, only an intermediate stage looking towards pension), he may even have a long period in hospital with pay and allowance under the D.S.C.R., and then find, after discharge with a disability, that his income is suddenly cut off by the Pensions Board ruling that his disability is not connected with service.

It may be noted that this system may produce this anomalous result: A man may have the decisions of three separate bodies to the effect that his disability is connected with service, that is to say: (1) the Treatment Branch doctors of the local D.S.C.R. unit, who recommend him for treatment; (2) the Director of Medical Services of the D.S.C.R., who approves the recommendation; and (3) the recommendation of the Pensions Branch doctors of the local unit of the D.S.C.R. as to pension. And yet, these three concurring decisions may be over-ruled by the opinion of a single assistant medical adviser of the Pensions Board at Ottawa. On the other hand, although it is less probable, it is possible that exactly the opposite result may obtain—the applicant may have applied for treatment, and: (a) the treatment doctors at the local D.S.C.R. unit may have decided that his disability is not connected with service, and recommended refusal of treatment; (b) the Director of Medical Services of the D.S.C.R. may have approved this recommendation and refused treatment; (c) the applicant may then apply for pension for the same disability, and the pensions doctors of the local D.S.C.R. unit may also decide that the disability is not connected with service, and recommend to the Pensions Board refusal of pension; and (d) these three concurring adverse decisions may be over-ruled by

the opinion of the single assistant medical adviser of the Pensions Board at Ottawa, and pension be granted.

The foregoing situation indicates, in the opinion of the Commission, the necessity of having appeals both as to pension and treatment determined by the same final tribunal. It will mean that the applicant may have to run the gamut of all these tribunals twice, once as to treatment, and later as to pension, but the fact that the final appeal tribunal has decided that the applicant is eligible for treatment ensures that an appeal later as to pension, by the same applicant with the same disability, will be similarly decided.

(b) PENSION PROCEDURE AND APPEALS

To those familiar with judicial systems it will seem somewhat striking that the Pension Act, 9-10 George V, Chapter 43, particularly Section 7, vests in a body, consisting of three Commissioners at Ottawa, the sole, original and final jurisdiction to determine the rights of applicants for pension for the whole of Canada. There is no appeal, control or effective review by any outside body, and the Pensions Board is not subject nor amenable to any ministerial or departmental instruction.

As has been outlined in the report already submitted in connection with the First Part of the Commission's Investigation, an applicant for pension applies to the local unit of the D.S.C.R. He is examined there by the Pensions Branch doctors of the D.S.C.R. These medical officers make a recommendation as to (a) whether the applicant's disability is connected with service, and (b) the degree of his disability. There is only a recommendation, and is made by medical officers not under the control of the Pensions Board. This recommendation is forwarded to the Pensions Board, which has absolute jurisdiction to decide whether or not the recommendation shall be made effective, and this decision finally determine the right of the applicant, both as to entitlement and as to the degree of his disability. The applicant has, however, always the right to apply again to the Pensions Board when any new circumstances arise which might support his claim.

There is a species of review provided by section 18 of the Pension Act whereby an applicant who is not satisfied with the decision may appeal within one year, but this appeal is heard by two members of the Pensions Board, the body which has, in theory at least, if not in actual fact, already decided adversely to the applicant.

In 1922, it was recognized that there should be some further means of appeal, and a Medical Appeal Board was established, consisting of three medical men under the D.S.C.R. but not connected with the Pensions Board. The jurisdiction of this Board is, however, merely advisory so far as pensions are concerned. The procedure is that, if a difference of opinion exists between the D.S.C.R. medical officers who examine the applicant at the unit, and the Pensions Board, then the applicant may appeal to this Appeal Board. The only power of the Medical Appeal Board, however, is to express its opinion to the Pensions Board, which is quite free to adopt or ignore this opinion. Thus, in effect, the Pensions Board remains supreme in decision.

As has been pointed out in the previous report, very few of the cases ever come to the personal attention of the members of the Pensions Board, the large percentage of decisions being made by individual members of its Medical Advisory staff.

(c) TREATMENT PROCEDURE AND APPEALS

A man applies to the local unit. If, on examination by a Treatment Branch doctor of the D.S.C.R. it is considered that his disability is connected with ser-

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vice, and that treatment may result in an improvement of his condition, a recommendation is forwarded to the Director of Medical Services of the D.S.C.R. at Ottawa, simply as to entitlement to Treatment and with no reference to pension. The Director of Medical Services, acting for the Minister of the Department of Soldiers' Civil Re-establishment, has the sole and final decision as to whether a man's disability is connected with service for the purpose of treatment. If his decision on the recommendation of the local doctor is favourable, the man is admitted to hospital, and receives treatment. He also gets pay and allowances, on the theory that he is for the time being reinstated on service. Formerly, the only method whereby the applicant could have an adverse decision as to treatment reviewed, was by writing in and asking that his case be taken up again, but it was reconsidered by exactly the same officials as had previously decided against him. Since 1922, the Medical Appeal Board (already referred to in respect of pensions) has exercised similar jurisdiction in treatment appeal cases, with this exception, that its decisions as to treatment have been accepted as final by the D.S.C.R.

(d) OPERATION OF PRESENT MEDICAL APPEAL BOARD

This Board was constituted, at the recommendation of the Parliamentary Committee of 1922, by Order in Council P.C. 1526 of July 22, 1922. It began operations in December, 1922. Briefly, its jurisdiction is to review decisions of the Pensions Board and the D.S.C.R. as to pension and treatment, under the following conditions:—

- (a) *As to Treatment.*—The applicant must tender a certificate from a medical practitioner showing that the decision is at fault, and submit reasonable evidence substantiating the facts set out in the certificate.
- (b) *As to entitlement to Pension.*—Where the assistant Medical Advisers of the Pensions Board have given a decision, as to entitlement, contrary to that of the Pensions Branch doctors in the local D.S.C.R. unit.
- (c) *As to the assessment of Pension.*—Where the pension has been suspended, reduced or cancelled, by the Pensions Board, without or contrary to the opinion of the Pensions Branch doctors in the local D.S.C.R. unit.

It is provided, in the Order in Council, that the decision of the Appeal Board as to cases of pension and treatment shall be final, but this is immediately limited by the provision which follows to the effect that the decision shall not contravene the Pension Act or the regulations of the D.S.C.R. When it is remembered that the Pension Act contains a provision to the effect that the decision of the Pensions Board shall be final, it will be seen that the powers of the Medical Appeal Board, as to pension decisions, are purely advisory. The jurisdiction as to treatment appears to depend on the somewhat uncertain contingency of conflicting with D.S.C.R. regulations.

According to a statement furnished the Commission by the Chairman of the Medical Appeal Board, there have been 136 requests for appeals from the commencement of the operation of the Board in December, 1922, until the 24th of April, 1923. Of these 82 were, according to the Appeal Board's ruling, eligible for appeal. Of the 82 eligible cases, 36 had been decided, 9 were under consideration, and further information was being awaited from the remaining 37. Of the 36 appeals dealt with, 29 were treatment cases and 7 pension.

Of the 29 treatment cases, 13 were decided favourably to the applicant, reversing the decision of the D.S.C.R. The latter gave effect to these decisions.

Of the 7 pension cases, 5 decisions of the Medical Appeal Board were favourable to the applicant, reversing the decision of the Pensions Board. The

action of the Pensions Board as to these cases was as follows: As to one case, the Pensions Board had taken action on lines similar to the decision of the Medical Appeal Board before the decision of the Appeal Board had been received; as to another, the decision of the Appeal Board had not yet been transmitted to the Pensions Board; as to the remaining three cases, the decision of the Medical Appeal Board was forwarded to the Pensions Board on the following dates respectively: January 4, 1923, April 4, 1923, April 19, 1923, and on April 26 were still under consideration by the Pensions Board.

The comparatively small number of appeals is, the Commission considers, no criterion of the number of cases throughout the country which are fairly eligible for reconsideration. The reasons given for the dearth of appeals are:—

- (1) The lack of general knowledge of the existence of the Appeal Board;
- (2) The conditions restricting the applicant's right to have his appeal heard by the Appeal Board;
- (3) The ineffectiveness of the Appeal Board's decisions, particularly with regard to pensions.

The Commission considers that the Medical Appeal Board, whatever its personnel, cannot under its present constitution form an efficient tribunal of last resort or provide what the Commission considers to be the necessary facilities for the proper reconsideration of cases. The fact that this Board is a purely medical tribunal further militates against its success as an effective Court to consider, not only medical questions, but questions of fact and law.

APPEAL TRIBUNALS IN GREAT BRITAIN AND THE UNITED STATES

Canada, unlike Great Britain and the United States, has a centralized system for awarding pensions and treatment. Both in Great Britain and the United States, the country is divided into districts, and pension decisions are made by district or regional tribunals. In Great Britain, pensions are under the control of the Ministry of Pensions. In the United States, they are under the control of a Government department known as the Veterans' Bureau, the Director of which is responsible directly to the President of the United States.

GREAT BRITAIN

Briefly, the pension procedure in Great Britain is that the applicant applies at an Area Office, of which there are over 100 throughout the United Kingdom. The application then goes to the Regional Office, which comprises a group of Areas, and in this office the awards as to the applicant's entitlement to pension and the assessment of his disability are made. These decisions are final unless appealed from, and require no ratification or examination by a central authority. The decision as to entitlement is made by a Board, the members of which are of diverse occupations.

The applicant if he so desires, has a right to have his case further considered by the Ministry at Headquarters.

Entirely independent of the Ministry, a system of some 30 District Appeal Tribunals has been established throughout the United Kingdom. The personnel of these Tribunals consists of a medical man, a lawyer and an ex-service man, who are appointed, not by the Ministry of Pensions, but by the Lord Chancellor. The applicant may assert his appeal to one of these District Appeal Tribunals. The District Appeal Tribunal will not hear the appeal unless the applicant is personally present or consents in writing to the hearing in his absence. The applicant has one year in which to assert his appeal but he may appeal only once.

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There is no Central Appeal Court over these District Appeal Tribunals, and their decision is absolutely final. The only means of securing uniformity of decision in these various District Appeals Tribunals is through a Secretariat, established by the Lord Chancellor, to which the decisions are reported, and which may communicate from time to time with the Tribunals commenting on decisions and endeavouring as far as possible to secure uniformity.

The applicants are advised and assisted with their claims by local committees of prominent men, who serve without remuneration but who are allowed a secretary from the local Pensions office and paid by the Ministry.

UNITED STATES

Briefly, the pension procedure in the United States is that the applicant applies at a Sub-district Office, of which there are 130. The application then goes to the District Office, of which there are 14, and is decided by a District Ratings Board consisting of one doctor and one lawyer and an officer from the rehabilitation division (corresponding with the Vocational Training Branch in Canada). Their decisions are final unless appealed from. They require no confirmation by any central body to make them effective. Appeals may be made from the District Ratings Board to the District Appeal Board, which is within the Bureau, and is composed of three district officials of the Bureau of diverse occupations. An appeal lies again from the District Appeal Board to the Central Board at Washington, which is also within the Bureau, and is composed of Bureau officials also of different occupations. A further reviewing body is a Medical Review Board, consisting of a large number of medical officers at Washington, and which determines primarily only medical questions. A further appeal may be taken to the Director of the Bureau, and this appeal is really decided by an Advisory Board consisting of the heads of the various divisions of the Veterans' Bureau at Washington.

In the United States system, while the applicant has the right to personally appear before any of these appeal boards, it is seldom that this opportunity is taken advantage of, and the appeals are generally decided upon the contents of the applicant's file.

In all of the above proceedings, applicants are advised and assisted by soldiers' friends, called Contact Officers, paid by the Bureau and located in each Sub-district Office and in all the larger hospitals.

COMPARATIVE FEATURES

It will be seen, from the foregoing, that in Great Britain the Appeal Tribunals are independent of the Ministry, while in the United States the Appeal Boards are composed of personnel from the department. In both Great Britain and the United States a policy of decentralization has been adopted, with apparently satisfactory results. There are the obvious advantages of convenience, the elimination of many frivolous appeals by discussion with the applicant, and the confidence which an applicant has in a territorial tribunal the personnel of which he is more likely to know by reputation at least, and from the fact that he believes his case will receive more thorough and less hurried consideration.

PROPOSAL ON BEHALF OF EX-SERVICE MEN

The suggestions which have been made at all the hearings of the Commission, as to the constitution of appeal tribunals, have contained the basic principle that there should be district tribunals rather than simply one central

body. These suggestions have taken various forms. It has been recognized that, in view of the difficulties of pension decisions, and the study of Pension laws and regulations, which is necessarily involved, there should be, at least for a time, some co-ordinating body. This has led to a further suggestion that all recommendations of district tribunals should be subject to confirmation by a central body. The consensus of the opinions expressed on behalf of ex-service men before the Commission was to the effect that the following principles should be included in any appeal system:—

- (a) A district Tribunal, members to be ex-service men;
- (b) A Federal Tribunal, members to be ex-service men;
- (c) A recognized Soldier's Adviser;
- (d) The right of personal appearance;
- (e) Access to file;
- (f) Right to further appeal upon production of satisfactory new evidence.

The general procedure to be: (1) the applicant to make his appeal from the Pensions Board to the District Tribunal; and (2) if the recommendation of the District Tribunal be adverse to the applicant, it be final; (3) if the recommendation of the District Tribunal be favourable to the applicant, it be submitted for reconsideration to the Pensions Board; (4) if the Pensions Board refuses to concur in the recommendation of the District Tribunal, the case be passed automatically to a Central Appeal Tribunal, the decision of which should be final.

The Commission considers that an objection might be made to the feature, number (2) above, by which the decision of the District Tribunal against the applicant would preclude the case going to the Federal Tribunal since, under reverse circumstances, the applicant does not get the benefit of a favourable recommendation of the District Tribunal until accepted by the Pensions Board or confirmed by the Federal Tribunal.

RECOMMENDED APPEAL SYSTEM

It is realized that the establishment of District Tribunals involves considerable cost and machinery, and also the problem of training a large personnel in pension matters. This cost should be gradually reduced as the accumulation of appeals is disposed of, and new applications for pensions should diminish in number as the post-war period increases. As the District Tribunals become familiar with the work, the necessity for a Federal Tribunal may be obviated, or the alternative might be adopted of enlarging the boundaries of the districts. It is felt that the obtaining of trained personnel for District Tribunals will not prove an insuperable difficulty, having regard to the large number of medical officers and others interested in soldier problems who are already familiar with pension matters.

After considering all the suggestions received from representatives of ex-service men and the systems in vogue in both Great Britain and the United States the Commission has come to the conclusion that an appeal procedure which would meet conditions in Canada and fairly protect the interests of both the ex-service man and his dependents, and the country, would be the following, which is hereby recommended:—

- (a) The establishment, under the Department of Justice, of a *District Review Board* for each of the nine D.S.C.R. districts, and of a *Federal Appeal Board* for the Dominion of Canada, the personnel of each of these tribunals to consist of a medical man, a lawyer and a layman, at least two of whom shall be ex-service men.

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- (b) An appeal to lie from decisions as to Treatment or Pension to the District Review Board, which shall, after hearing the case, make such recommendation as is warranted; this recommendation to be forwarded to the authority, either the Pensions Board or the D.S.C.R., which has made the decision complained of. In case a recommendation favourable to the applicant is not carried into effect within a specified time, or in case of a recommendation unfavourable to the applicant, the recommendation and file is automatically to go to the Federal Appeal Board. Generally, the latter may, without formal hearing, approve or disapprove the recommendation of the District Review Board, and the original authority shall act on the Federal Appeal Board's decision; but in cases where the recommendation of the District Review Board is more favourable to the applicant than the decision complained of, the Federal Appeal Board may not disapprove the recommendation without giving the applicant an opportunity to appear personally, or be represented before it, at a hearing in the district in which the applicant resides. On this hearing, the Federal Appeal Board may make such final decision as may appear just.
- (c) The right of appeal to be open for one year from the coming into force of the regulations, or for one year after the decision complained of, whichever may be last.
- (d) The applicant to be entitled to only one appeal on the question of the connection of his disability with service, but if he subsequently submits evidence sufficiently convincing in the opinion of the District Review Board, the latter may, on special application grant the right to another appeal.
- (e) Applicant to be entitled to only one appeal as to any one decision fixing the degree of disability, but assessment on each periodic re-examination to be considered a decision for this purpose. On an appeal as to degree of disability, the whole case, including service connection, to be reviewed and the assessment increased, diminished or pension discontinued, as the circumstances warrant.
- (f) The appointment of an official Soldier Adviser in each D.S.C.R., unit, to assist applicants in the preparation and presentation of their cases.
- (g) The applicant to have the right to appear personally, and if he so desires, but at his own expense, to be assisted by counsel or other representative other than the official Soldier Adviser.
- (h) For the purpose of preparing the case, the Soldier Adviser, the applicant, or some one person authorized by him in writing, to have reasonable access to the applicant's personal file in the presence of a D.S.C.R. official.
- (i) The expenses of the successful applicant, in appearing before either the District Review Board or the Federal Appeal Board, to be paid on the scale now allowed applicants brought in for periodical medical attention.

These recommendations as to the general appeal system are supplemented by a memorandum, herewith, to indicate certain matters for consideration in working out the plan above proposed. The details are tentative only and subject to such modification as may be considered necessary in carrying into effect the said general principles.

MEMORANDUM

1. Provision for the appointment, by the Governor General in Council, of ex-service men to act as *Soldiers' Advisers* in each D.S.C.R. unit, each appointee to be selected from at least four nominees of the Councils of the Dominion Veterans' Alliance of the province composing the territory of the D.S.C.R. unit, acting jointly.

2. *District Pension Review Boards*:—

- (a) *Appointment*.—By the Governor General in Council on the recommendation of the Minister of Justice.
- (b) *Personnel*.—Three members, two of whom shall be ex-service men, one a medical doctor, one a lawyer, and one a layman preferably with industrial or business experience qualifying him to consider the effect of disabilities on the employability of the applicant in unskilled occupations; one of the members to be named, by the Governor General in Council, as Chairman.
- (c) *Jurisdiction*.—To review and make recommendations in respect of decisions complained of by the applicant as to treatment or pensions as hereinafter set out; and to hold sittings within its territorial limits at such places and times as may be required for the rapid and efficient disposal of cases.
- (d) *Territorial Limits*.—To correspond approximately with the boundaries of the units of the D.S.C.R.
- (e) *Period of Appointment*.—For one year and thereafter during pleasure.
- (f) *Remuneration*.—On a per diem basis to be fixed by the Governor General in Council.

3. *Federal Pension Appeal Board*:—

- (a) *Appointment*.—Similar to that of members of the District Pension Review Boards.
- (b) *Personnel*.—Similar to that of the District Pension Review Boards.
- (c) *Jurisdiction*.—To consider and make final decisions as to recommendations made by the District Pension Review Board as hereinafter set out.
- (d) *Territorial Limits*.—The whole of Canada, sittings to be held in such places and times as may be required for the disposal of appeals, with the general idea that such sittings may be held in any places where there are Unit or Sub-Unit offices of the D.S.C.R.
- (e) *Period of Appointment*.—Five years.
- (f) *Remuneration*.—To be fixed by the Governor General in Council.

4. Provision for granting to ex-service men and dependents the right to appeal from decisions as to treatment or pension, either in respect of entitlement or assessment, such appeal to be to the District Pension Review Boards and thence to the Federal Pension Appeal Board, as hereinafter set out.

5. Provisions prescribing *procedure respecting appeals*, the following being submitted not as exhaustive, but to indicate the Commission's idea as to the general operation of the proposed tribunals:—

- (a) *Notice*.—Any applicant for treatment or pension who complains of a decision in respect thereto may give notice to the officer in charge of the D.S.C.R. Unit for the territory in which the applicant resides, that he desires to appeal from such decision.

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(b) *Certificate*.—He shall, with the notice, forward a certificate as follows:—

(1) In case of appeal from a decision refusing Treatment or Pension on grounds indicating that the disability complained of is not considered to be connected with service, the certificate shall be signed by a qualified medical practitioner who is a member in good standing of a recognized Medical Association in the Province in which the applicant resides, stating that in the opinion of such medical practitioner, the applicant has a disability, and that there is reasonable probability that such disability was attributable to or incurred or aggravated during service.

(2) In case of appeal from a decision as to the degree of the percentage of the applicant's disability, the certificate shall be signed by two qualified medical practitioners who are members in good standing of a recognized Medical Association in the province in which the applicant resides, stating that in the opinion of such medical practitioners the degree of disability for which pension has been awarded is too low, and specifying the opinion of such medical practitioners as to the percentage by which the applicant's earning capacity in an unskilled occupation has been decreased by service disability.

(3) The certificate referred to in clauses (a) and (b) shall also contain the following clause:—

“ I will, if requested by the District Pension Review Board, furnish further particulars of the grounds on which this certificate is based, and will be prepared to give evidence under oath in support of the opinion herein expressed, when required.”

(c) *Time*.—The notice, with the certificate, must be received by the officer in charge of the D.S.C.R. unit within one year from the date of the coming into force of effective provisions for such appeal, or within one year after the date when the applicant was advised of the decision complained of, whichever shall be last.

(d) *Acknowledgment*.—On receipt of the notice, the officer in charge of the D.S.C.R. unit shall acknowledge same, and, in case of appeals from assessment of disability, shall inform the applicant that the case is open to review on all points and that on review and appeal the award may not only be increased but may be reduced, or discontinued if it is found that the applicant is not entitled to pension, and further, that such appeal may be immediately withdrawn if upon reconsideration the applicant so desires.

(e) *Drawing Head Office File*.—The officer in charge of the D.S.C.R. unit shall, on receipt of the Notice of Appeal with the Certificate, forthwith,—

(a) notify the Soldier's Adviser of the receipt of same; and

(b) requisition the applicant's Head Office file from the Central Registry, and same shall be forwarded by the Central Registry accordingly.

(f) *Inspection of File*.—On receipt of the Head Office file, the officer in charge of the D.S.C.R. unit shall forthwith advise the Soldier's Adviser thereof, and shall make such file available for reasonable inspection, in the presence of a D.S.C.R. official, by the Soldier's Adviser, the applicant and some one other person authorized thereto in writing by the applicant.

- (g) *Advice to Applicant.*—The Soldier's Adviser shall thereupon communicate with the applicant, advising him of any further evidence which may be desirable, and shall generally assist the applicant in connection with the appeal.
- (h) *Order of Hearing.*—Appeals shall be set down for hearing according to their nature and urgency and not necessarily in the order in which the Notices of Appeal have been received; appeals as to entitlement shall generally have precedence over appeals as to assessment.
- (i) *Notice of Hearing.*—The officer in charge of the D.S.C.R. unit shall advise the applicant and the Soldier's Adviser of the hearing at least ten days before the date when the District Review Board is to hear the appeal.
- (j) *Withdrawal of Appeal.*—The applicant shall have the right, by notice in writing to the officer in charge of the D.S.C.R. unit, to withdraw his appeal, and if such notice is received by such officer not later than seven days previous to the time fixed for the hearing, but not otherwise, it shall be considered as if there had been no appeal.
- (k) *Appearance at Hearing.*—The applicant shall have the right to appear in person before the District Review Board, and in case of a favourable recommendation by the latter or of an unfavourable recommendation by the District Review Board but reversed by the Federal Appeal Board, the applicant shall be paid his reasonable expenses on the scale allowed applicants brought in for periodical medical examination; otherwise, no expenses shall be paid to the applicant. The applicant shall be represented by the Soldier's Adviser, but the applicant may, if he so desires, and at his own expense, be represented by counsel or other person. The authority which has made the decision appealed from, that is, the Pensions Board or the D.S.C.R., as the case may be, shall designate some official to attend on the hearing, simply to assist in putting before the District Review Board all considerations affecting the application and not in any sense as a departmental advocate.
- (l) *Evidence at Hearing.*—The District Review Board shall, upon the hearing, have the right to completely review the case both as to entitlement and assessment and to call witnesses, require and take evidence under oath or otherwise, and either orally or by declaration, certificate or otherwise. It may require further medical or physical examination of the applicant and it may call and employ such experts as may be desirable for that purpose.
- (m) *Recommendation by District Review Board.*—The District Review Board shall, upon and after such hearing, make such recommendation as to the disposition of the appeal as it may consider warranted by the evidence on file, and any further evidence and examinations adduced and made and under the statutes and regulations applicable to the case, such recommendation to include a full statement of the grounds therefor. A copy of such recommendation shall be filed in the D.S.C.R. unit office of the district where the applicant resides, and shall be open for inspection of the Soldier's Adviser, the applicant and the person, if any, authorized by the applicant to inspect same, and a copy of such recommendation shall be mailed to the applicant.
- (n) *Transmission of Recommendation.*—Such recommendation, with the applicant's Head Office file including a copy of all evidence, documents, etc., considered by the District Review Board, shall forthwith be transmitted by the officer in charge of the D.S.C.R. unit to the authority

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which made the decision appealed against, that is to say, the D.S.C.R. or the Pensions Board as the case may be, for reconsideration, and (a) in case the recommendation is more favourable to the applicant than the decision complained of and such recommendation is not accepted and carried out within two months from the receipt thereof, or (b) in case such recommendation is not more favourable to the applicant than such decision, such recommendation shall, with the applicant's Head Office file, be forthwith transmitted to the Federal Appeal Board.

(o) *Action by Federal Appeal Board.*—Subject to the provisions of clause (p), the Federal Appeal Board shall, on receipt of such recommendation, documents and file, consider same with all despatch and shall have full power, without formal hearing, to approve or disapprove such recommendation, and the decision of the Federal Appeal Board thereon shall be final and binding.

(p) *Local Hearing in certain cases:*

(1) In cases where the recommendation of the District Review Board is more favourable to the applicant than the decision complained of, the Federal Appeal Board shall not disapprove of such recommendation without affording the applicant the opportunity of appearing personally, or by representative, at a hearing before the Federal Appeal Board in the D.S.C.R. district where the applicant resides.

(2) If such opportunity is not afforded within four months after the receipt of such recommendation by the Federal Appeal Board, the recommendation shall automatically be dealt with and acted upon as if the same had been approved, until the decision of such Federal Appeal Board has been given after such opportunity of appearing personally or by representative as aforesaid has been afforded.

(3) In connection with and on such hearing, the Federal Appeal Board shall have the same authority as that of the District Review Board specified in clause (1).

(4) On and after such hearing, the Federal Appeal Board may either approve, disapprove, alter or modify such recommendation and make such decision as it may consider warranted.

(5) In case of the personal appearance of the applicant before such Federal Appeal Board where a recommendation of the District Review Board favourable to the applicant has been approved, the applicant shall be paid his expenses similarly to the case of personal appearance before the District Review Board.

(6) In a case where the applicant is afforded the opportunity of being present personally or by representative before the Federal Appeal Board, the applicant shall be represented before the Federal Appeal Board by the Soldier's Adviser or, at the applicant's option, in a similar manner to the representation hereinbefore specified before the District Review Board. The authority making the decision appealed against shall also be represented before the Federal Appeal Board in the same manner as before the District Review Board.

(q) *Transmission of Federal Appeal Board Decision and Action thereon.*—A copy of any decision of the Federal Appeal Board shall be forthwith transmitted to the authority making the decision appealed from and shall be forthwith carried into effect by such authority. Copies of such decision shall also be mailed to the officer in charge of the D.S.C.R. unit and to the applicant respectively.

(r) *Limitation on Appeal.*—There shall be only one appeal by the applicant on the question as to whether any specified disability is attributable to or was incurred or aggravated during service, provided that where the applicant on special application satisfies the District Review Board that he has discovered new evidence clearly establishing such connection of the disability with service, the District Review Board may give leave to the applicant to appeal, and same may proceed de nove. There shall be only one appeal from a decision as to the degree of the applicant's disability, but this shall not prohibit a fresh appeal on each decision made after periodic re-examinations.

6. The District Review Boards and the Federal Appeal Board shall have *all the powers and authorities granted to Commissioners* under the following clause of the *Inquiries Act* (R.S.C. Chapter 104):—

7. The commissioner or commissioners may, for the purpose of the investigation, enter into and remain within any public office or institution, and shall have access to every part thereof, and may examine all papers, documents, vouchers, records and books of every kind belonging thereto and may summon before him of them any person and require him to give evidence on oath, orally or in writing, or on solemn affirmation if he is entitled to affirm in civil matters; and any such commission may administer such oath or affirmation.

8. The commissioner or commissioners may, under his or their hand or hands, issue a subpoena or other request or summons, requiring and commanding any person therein named to appear at the time and place mentioned therein, and then and there to testify to all matters within his knowledge relative to the subject-matter of such investigation, and to bring with him and produce any document, book, or paper, which he has in his possession or under his control relative to any such matter as aforesaid; and any such person may be summoned from any part of Canada by virtue of such subpoena, request or summons. .

2. Reasonable travelling expenses shall be paid to any person so summoned at the time of service of the subpoena, request or summons.

9. If, by reason of the distance at which any person whose evidence is desired, resides from the place where his attendance is required, or for any other cause, the commissioner or commissioners deem it advisable, he or they may issue a commission or other authority to any officer or person therein empowering him to take such evidence and report the same to him or them.

2. Such officer or person shall, before entering on any investigation, be sworn before a justice of the peace faithfully to execute the duty entrusted to him by such commission, and shall, with regard to such evidence, have the same powers as the commissioner or commissioners would have had if such evidence had been taken before him or them, and may, in like manner, under his hand issue a subpoena or other request or summons for the purpose of compelling the attendance of any person, or the production of any document, book or paper.

7. Provisions to be made authorizing all necessary regulations as to *sittings, practice and procedure* of the District Review Boards and of the Federal Appeal Board, and to *increase or reduce* the number of such Boards or either of them or their territorial limits as the volume of appeals may from time to time require.

PART FOUR

RETURNED SOLDIERS' INSURANCE ACT

Representations have been made on behalf of ex-service men, at some of the sittings of the Commission, to the effect that the time provisions of the Returned Soldiers' Insurance Act should be further extended. Some proposals have gone so far as to urge indefinite extension. The reasons given in support of this request have been:—

- (a) That some ex-service men are still in ignorance of the beneficial provisions of this Act;
- (b) That, on account of economic conditions, ex-service men who would otherwise have taken advantage of the Act have been precluded from doing so;
- (c) That one of the objects of insurance was to afford a means to ex-service men of providing for their dependents where pension was not indicated, and that the applications of a certain number of men for pension are still pending, while they are endeavouring to get further evidence, and that these applications may not be decided before September 1, 1923, when the Act expires;
- (d) That claimants for pension who before a Board of Appeal may eventually establish their right, have, during the interval, been deprived of pension moneys which they otherwise would have received and which have been available for the payment of premiums on insurance.

The Commission has, in its report on the First Part of the Investigation, gone very fully into the whole matter of the scheme of the Returned Soldiers Insurance Act. The original request on behalf of ex-service men was that those suffering with a war disability, who had dependents and who were unable to obtain insurance at standard rates by reason of their disability, might be provided with same by the State.

The difficulty immediately presented itself of determining whether the condition of impaired health was or was not due to war service. As most men had been but recently discharged, it was considered best, in order to give every concession to the applicant and in order to avoid the trouble and expense of medical examination, to admit for a period of one year, but no longer, that any disability from which an applicant suffered was due to war service and thus to accept for insurance all ex-service men with or without dependents, without regard whatsoever to their state of health nor to whether any impairment was due to war service. Clearly, it was not contemplated to continue for any length of time such a wideopen insurance scheme, for the reason that as long as the privileges of the Act were available, any one finding himself seriously ill would take out a policy for the largest amount he could obtain and pay for.

The Act therefore, as passed, insured not only ex-service men suffering from a war disability, but went much further and put the applicant without dependents on exactly the same footing as the applicant with dependents regardless of his physical condition and of whether any impairment of health was connected with service.

The Commission is convinced, from the evidence, that the original intention was to limit this wide open operation of the Act to one year, but it was, as finally passed, left open for two years, expiring September 1, 1922. In 1922, as fully set out in the previous report of the Commission, certain restrictions were introduced, and these were embodied in the statute which went into operation on July 1, 1922. At the same time a concession was made by extending the restricted Act for another full year expiring September 1, 1923.

The Commission has, in said previous report, expressed opinions which, if acted upon, will result in payment of all claims as if there had been no restriction up to the legislation which became effective July 1, 1922. These payments will probably require the expenditure of many hundreds of thousands of dollars. The Commission considers that if this opinion is acted on, the full spirit of the enactment will have been carried out. In addition to this, the Act has been extended for another full year for the benefit of those whom the ex-service men had originally in view, namely, the man with a war disability and dependents, even though the application for insurance is made on his deathbed.

It is admittedly impossible to make any accurate prediction as to the ultimate financial commitment involved in an Act of this kind in view of its unprecedented character; but a rough estimate made in the evidence before the Commission placed the loss on maturity of the insurance already in force in April, 1923, at from ten to twelve million dollars.

As to the reasons given above which have been urged for further extension, the Commission considers:—

- (1) That for the past two years the most ample publicity has been given to the beneficial features of the Act;
- (2) That in connection with a scheme of this kind where limitation of time is the only safeguard which the State can have, economic considerations in the case of individual prospective applicants cannot be sound ground for leaving the State exposed indefinitely to the inevitably large losses involved. The extensions already made are, the Commission considers, all and possibly more than could reasonably be expected by ex-service men and granted by the country to meet an unusual economic situation.

The Commission intimated at its public hearings both in Winnipeg and in Toronto, when this matter was being discussed, that it wished it to be known that no applications should be deferred in the expectation of any action or recommendation of extension by the Commission.

In view of the above, and of the matters fully set out in the report of the Commission on the First Part of the Investigation, and having in mind the further fact that there are still about four months within which the advantage of the Act may be obtained, the Commission is of opinion that it would not be warranted in recommending any further extension of the time limit of the Act.

PART FIVE

EMPLOYMENT SERVICES FOR HANDICAPPED MEN

The Commission has been requested to deal briefly with the question of the means which may be adopted for assisting in the absorption into suitable employment of ex-service men suffering substantial physical handicaps from war service. This subject, the Commission considers, has to do with one of the most important soldier problems which the country is now facing, and, apparently, the problem must become increasingly difficult as time goes on.

The Commission cannot hope, even after there has been an opportunity for the further consideration which the question requires, to find a satisfactory solution for a problem which still remains unsolved in every country which has engaged extensively in the war and which is the result, not only of war service conditions, but of an abnormal economic situation which is world wide.

At the urgent request of representatives of ex-service men, the Commission simply touches, in this early Interim Report, one phase of the question which has been briefly discussed in the evidence given before it, namely, the facilities which are provided by Governmental authorities in placing handicapped ex-service men in suitable employment.

It has been recognized by the Federal authorities that these men should be thus assisted and given preferential consideration. The D.S.C.R. has maintained, as part of its re-establishment activities, a Handicap Section in sixteen of its local offices. The object of these sections is to interest prospective employers on behalf of this class of ex-service men and to bring together the man and the job.

There is also operating, in each of the provinces of Canada, a Provincial Employment Service which is for all unemployed and takes no special account, officially, of handicapped ex-service men.

Under the Federal Department of Labour there is a branch called the Employment Service of Canada. This branch, in an endeavour to assist with the general unemployment problem, has entered into an agreement with all the provinces, except New Brunswick, whereby the Dominion contributes up to fifty per cent of the cost of operation of the Provincial Employment Offices, in consideration of the latter making certain returns to the Federal branch. These returns are required with a view to making it possible to put into force clearing house methods, so that the surplus of unemployed in some parts of Canada may be placed in other parts of the country where there is a shortage.

This is as far as the Federal activities in employment matters go, employment generally being a provincial concern.

The D.S.C.R. has been endeavouring to have its Handicap Section taken over by the Provincial Employment Offices, the department offering to pay the total cost of the increased expenditure made necessary thereby. Agreements to this effect have already been entered into with the provinces of Alberta, Saskatchewan and Nova Scotia, and also individually with the city of St. John. As yet, although negotiations have been proceeding for nearly a year in some cases, no arrangement has been concluded with the other six provinces. The Commission was assured that the D.S.C.R. was hopeful that further agreements would soon be arrived at, but the comparatively slow progress made to date does not give promises of that early co-ordination which the Commission

believes is absolutely necessary and urgent if the provincial activities can really do anything effective to ameliorate the situation.

One advantage of having these Handicap Sections of the D.S.C.R. taken over by the provincial authorities is that the latter have nearly five times the number of offices throughout the Dominion, and are therefore much more closely in touch with employment opportunities.

In the provinces where the agreement between the D.S.C.R. and the provincial offices is not in force, it is obvious that the D.S.C.R. activities on behalf of handicapped men are in direct competition with the efforts of the provincial agencies which necessarily include a certain number of men equally handicapped by physical disabilities incurred in civilian life.

The officials of the D.S.C.R. are convinced that the co-ordination of the Department's Handicap Section with the Provincial Bureaus would work satisfactorily. What the Commission considers necessary, however, is that if this opinion is correct, the co-ordination should be effected and put into operation without delay.

It would seem that, in view of the substantial contribution made by the Federal authorities towards the provincial services, the former might fairly ask that agreements similar to those already made with the D.S.C.R. be entered into by the remaining provinces, particularly on account of the fact that the D.S.C.R. is willing to undertake the total additional cost involved.

The only alternative is for the D.S.C.R. to increase its employment activities and operate on its own account all over Canada. This involves opening additional offices, and the carrying of whatever administrative staff may be necessary to furnish a complete National Employment Service for handicapped, ex-service men.

All of the above is respectfully submitted.

J. L. RALSTON,

Chairman.

WALTER McKEOWN,

Commissioner.

A. E. DUBUC,

Commissioner.

APRIL, 1923.